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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th June 2005

No. 5117-II/1(B)-43/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2005 in Industrial Dispute Case No. 66/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Cuttack Central Co-operative Bank Ltd., Nimchouri, Cuttack and its workman Shri Biswanath Parida was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 66 OF 1995

Dated the 31st May 2005

Present :

Shri P. K. Sahoo, o. s. J. s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Secretary .. First Party—Management
Cuttack Central Co-operative Bank Ltd.
Nimchouri, Cuttack.

And

Shri Biswanath Parida .. Second Party—Workman
S/o. Shri Kanu Ch. Parida
Vill./P. O. Khandeita, P. S. Cuttack Sadar
Dist Cuttack.

Appearances :

For the First Party—Management .. Shri A. C. Mohanty, Advocate

For the Second Party—Workman .. Shri P. K. Lenka, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 2742(5)-L. E., dated the 24th February 2005 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“Whether the dismissal of Shri Biswanath Parida, Supervisor from service with effect from the 1st February 1992 by the management of M/s. Cuttack Central Co-operative Bank Ltd., Nimchouri, Cuttack is legal and/or justified ? If not, to what relief Shri Parida is entitled ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present case is that workman Biswanath Parida was appointed as Junior Assistant in the establishment of the management of Cuttack Central Co-operative Bank Ltd., Nimchouri, Cuttack (in short the management) as per the office order No. 11186, dated the 4th June 1979. While continuing as such the workman was allowed to officiate as Supervisor and was posted to the head office vide order No. 7810, dated the 11th January 1982. Thereafter he was attached to Cuttack City Branch and was allotted with 36 employees Societies as per order No. 15, dated the 11th April 1991. According to the workman he was discharging his duties honestly, efficiently and with much sincerity, devotion and to the utmost satisfaction of the management, But the Branch Manager of the Cuttack City Branch without any rhyme or reason called for an explanation on the basis of some false and frivolous allegations. He tried his level best to convince and satisfy the management but all his efforts in this respect bore no fruit. He was all on a sudden relieved from his duties on the 23rd April 1991 A. N. from the City Branch with a direction to join at the head office. On the same day he was also placed under suspension with immediate effect. It is categorically averred in the statement of claim that such order of suspension, transfer and relieved from duties were illegal, wrong, arbitrary and against the principles of natural justice. According to the workman, basing on some allegations of misappropriation of funds of some societies charges were framed against him. He submitted his written explanation denying all the charges and requested the management to crop the proceeding but to no effect. He also requested the management to supply in detail the copies of all connected and relevent documents so as to enable him to submit his fulleged and final explanation to such false charges. But all the efforts in this respect went in vain. One Shri B. C. Parida was appointed as Enquiry Officer who conducted the enquiry in a most illegal and irregular manner. The workman in his satatement of claim has categorically averred that he was not offered reasonable opportunities to defend his case during enquiry. However, the enquiry was accordingly followed and after completion of enquiry the Enquiry Officer

submitted his report to the management holding him guilty of the charges levelled against him. Although during personal hearing the workman tried his best to explain the illegalities and irregularities committed by the Enquiry Officer during enquiry and to prove his innocence but nothing fruitful was forthcoming. Without considering and examining the facts in detail the management passed the order of dismissal from service with effect from the 1st February 1992. According to the workman, the dismissal from service was completely irrroneus, illegal, arbitrary, unjustified and against the principles of natural justice. He therefore, while challenging the action of the management in dismissing him from service with effect from the 1st February 1992 has also prayed for his reinstatement in service with full back wages along with other service benefits. Hence the reference :

4. The management, on the other hand, filed written statement opposing the claim of the workman. According to the management while functioning as the Chief Executive of Shri Jagannath Farmers Service Co-operative Society Ltd., the workman committed serious irregularities and misappropriated the funds of the said Society for which disciplinary proceeding was initiated. Since the workman was involved in misappropriating the funds of the Society, he was placed under suspension and was simultaneously charge-sheeted. According to the management the domestic enquiry conducted by the management was fair and proper and the workman was afforded all reasonable opportunities to defend his case properly during enquiry and to examine all the papers and documents to prove his innocence but in fact he had not succeeded in proving his innocence. During domestic enquiry he was found guilty of the charges levelled against him and after careful consideration of the enquiry report, the management was constrained to dismiss him from service with effect from the 1st February 1992. It is categorically averred in the written statement that the orders of suspension and dismissal were just and proper and the action taken in this respect was legal and justified. Therefore the workman is not entitled to any relief as prayed for. On the above backgrounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Is there any necessity for framing charges against the second party workman or not ?
- (ii) If there has been fair and proper domestic enquiry ?
- (iii) whether the dismissal of the workman with effect from the 1st February 1992 by the management is legal and/or justified ?
- (iv) If not, to what relief the workman is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 but has not relied upon any document. On the other hand, the management has examined one

Sachindra Nath Das, the Law Officer of the management as M. W. 1 and has relied upon the xerox copies of the documents such as reports, suspension order, charge-sheet, enquiry report, show cause and dismissal order marked as Exts. A to J, respectively in support of its case.

FINDINGS

7. *Issue No. (i)* – During the course of argument issue No. (i) with regard to necessity of framing charges against the workman has been not pressed by the parties. Accordingly the said issue deserves no discussion.

8. *Issue Nos. (ii), (iii) and (iv)* – The above issues are taken up together for better appreciation and adjudication of the dispute under the present reference.

It is undisputed fact between the parties that the workman was placed under the suspension with effect from the 23rd April 1991 under Ext. E on the basis of the report submitted by the then Branch Manager of City Branch, Cuttack and the A. R. C. S., Cuttack City Circle vide Exts. A, B, C and D respectively. It is also undisputed between the parties that after such suspension charge-sheet was issued against the workman on the 28th May 1991 vide Ext. F and an enquiry was conducted against the workman to that effect. One B. C. Parida, the then Assistant Secretary was appointed as Enquiry Officer who after completion of the enquiry submitted his report vide Ext. G on the 30th September 1991. The enquiry report was communicated to the workman and the workman submitted his show cause on the 12th October 1991 vide Ext. M. Subsequently second show cause notice was issued to the workman and accordingly the workman submitted his explanation to the said second show cause notice. The management after careful consideration found the second show cause notice unsatisfactory and directed the workman for personal hearing. After personal hearing the management dismissed the workman from service with effect from the 1st February 1992 vide Ext. G.

9. On the above scenario the moot question that arises for consideration is as to whether the domestic enquiry was conducted in accordance with minimum principles of natural justice.

In this connection it would be most profitable to mention the following paramount decisions containing the well settled principles of law in the matter of domestic enquiry.

In the case of Union of India and another *Vrs.* Mohammed Ramjan Khan reported in AIR 1991 Supreme Court 471, it has been observed by the Hon'ble Apex Court as follows :

“In a disciplinary proceeding the reasonable opportunity includes—

- (a) An opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based.
- (b) An opportunity to defend himself by cross-examining the witness produced against him and by examining himself or any other witnesses in support of his defence.

- (c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposed to inflict one of three punishments and communicates to Government servants.

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We therefore come to the conclusion that supply of a copy of the enquiry report along with recommendations, if any in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would therefore be entitled to the supply of copy thereof.”

In the case of *State of Gujarat Vrs. R. C. Teredesai* reported in AIR 1969 Supreme Court, 1294. Their Lordships have held as follows :

“The requirement of a reasonable opportunity therefore would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent Government servant.”

In the case of *Sur Enamel and Stamping Works Vrs. Their Workman* reported in AIR 1963 Supreme Court 1914. Their Lordships have clearly held as follows :—

“An enquiry can not be said to have properly held unless—

- (i) The employee proceeded against had been informed clearly of the charges levelled against him.
- (ii) The witnesses are examined ordinarily in presence of the employee in respect of the charges.
- (iii) The employee is given a fair opportunity to cross-examine the witnesses.
- (iv) He has given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter.
- (v) And the Enquiry Officer records his findings with reasons for the same in his report.”

10. In the present case the perusal of the evidence of the workman clearly emerges that during communication of the charge-sheet he was asked to submit his explanation and accordingly he submitted his explanation which was not taken into consideration by the management. A domestic enquiry was initiated and he was asked to participate in the enquiry. In fact he had participated in the enquiry but he was not supplied with any documents with regard to the allegations levelled against him in order to prepare his defence. It has been categorically stated by the workman that he was not allowed to be assisted by a co-worker in the enquiry. He was also not afforded reasonable opportunities to defend his case. The copy of list of witnesses and the copy of the charge-sheet and deposition were also not supplied to him. Although he had requested the Enquiry Officer to supply all the documents in detail but he was not supplied with the same. The further perusal of the evidence of the workman clearly

reveals that the domestic enquiry was conducted in three sittings to which he had protested but to no effect. Rather the Enquiry Officer told that he was under pressure to complete the enquiry within short time. The workman has categorically stated that he was not given reasonable opportunity during enquiry to defend his case properly. The charges, according to the workman were not proved against him but the Enquiry Officer hold him guilty of the charges levelled against him. It is also in his evidence that he was asked to submit second show cause but the show cause submitted by him was not considered by the management. He was called by the management for personal hearing but in fact he was not heard. In his evidence the workman has clearly stated that the management illegally dismissed him from service with effect from the 1st February 1992 and the action of the management in this respect was illegal and unjustified. On the other hand the evidence already led by the management through M. W. 1. Sachindra Nath Das shows that the workman was given opportunity to defend his case and after personal hearing the management dismissed him from service with effect from the 1st February 1992 vide Ext. G. During cross-examination M. W. 1 admits that there was no preliminary investigation with regard to the reports under Exts. A to D submitted by the Branch Manager, City Branch, Cuttack and the A. R. C. S., Cuttack City Circle in order to ascertain the genuineness and truthfulness of the allegations made against the workman. He further admits that he had not participated in the enquiry either as a witness or as a marshalling officer. The evidence in cross-examination of M. W. 1 clearly shows that the relevant connected documents, copies of the list of witnesses, copies of the order sheet and deposition of the witnesses had not been supplied to the workman. On the whole the evidence of M. W. 1 clearly goes to show that no reasonable opportunity had been afforded to the workman to defend his case properly during enquiry. M.W. 1 has categorically stated that he had no personal knowledge about the details of the enquiry. He had also no knowledge when the enquiry commenced and when it was closed and the number of witnesses examined during the enquiry by the Enquiry Officer. He has also denied his knowledge about the details of the allegations made against the workman. It has been suggested to him that the workman is entitled to be reinstated in service with full back wages and other service benefits to which he has negatively replied. On the other hand, the evidence in cross-examination of the workman clearly reveals that he was not given reasonable opportunity to defend his case properly during the enquiry. From the above evidence it is clearly evident that the domestic enquiry conducted by the management was not fair and proper and the final order of dismissal vide Ext. G with effect from the 1st February 1992 was not based on any legal evidence. Except some bare suggestions the management has nowhere elicited that the workman was afforded reasonable opportunity to defend his case properly during the enquiry and that the domestic enquiry conducted by the management was fair and proper and that the dismissal of the workman from service was legal and justified. Admittedly the Enquiry Officer who had conducted the enquiry is now dead but it is not understood what prevented the management to examine the Branch Manager, City Branch, Cuttack and the A. R. C. S., Cuttack City Circle who had submitted the reports against the workman basing on which the enquiry was conducted by the Enquiry Officer.

The non-examination of the above witnesses in the present case leaves room to entertain doubt with regard to the fairness of the domestic enquiry. The management has also led no evidence to the effect that utmost care was taken by it to prove the fairness of the domestic enquiry. Admittedly the relevant documents relating to the charges levelled against the workman had not been supplied to the workman and the non-supply of documents, in my view, would certainly tantamount to violation of principles of natural justice. He was also not allowed to be assisted by a co-worker in the enquiry. It is also clearly evident from the evidence of the workman that he was called by the management for personal hearing but in fact he was not heard. On the whole he was not afforded reasonable opportunity to defend his case during enquiry. Thus it is clear that the manner in which the enquiry was conducted by the management is a blatant violation of principles of natural justice as enunciated in the aforesaid decisions. On a close scrutiny of the evidence and documents adduced by both the parties it is crystal clear that the domestic enquiry was not fairly conducted by the management and the final order of dismissal of the workman under Ext. G. was not based on any legal evidence. In this regard it would be most appropriate to refer to a decision reported in AIR 1984 Supreme Court 1805 in the matter of *Rajendra Kumar Kindra Appellant Vrs. Delhi Administration through Secretary (Labour) and other respondents* wherein the Hon'ble Apex Court have clearly observed that :

“It is equally well settled that where a Quasijudicial Tribunal or Arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The Industrial Tribunal or the Arbitrator or a quasijudicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind.”

After carefully examining the evidence led by the parties and documents already relied upon by them and keeping in view the settled position of law, I am led to hold that the domestic enquiry conducted by the management was not fair and proper.

11. In view of my aforesaid discussion and the observation made in the foregoing paragraphs, I have got no other alternative than to hold that the dismissal of the workman from service with effect from the 1st February 1992 was illegal and unjustified. In such view of the matter, the workman is entitled to the relief of reinstatement.

12. The perusal of the schedule of reference clearly reveals that the workman has been dismissed from service with effect from the 1st February 1992. There is no cogent material on record to show that he has been gainfully employed elsewhere with effect from the date of dismissal from service. In that view of the matter, the workman is entitled to be reinstated in service but on the facts and circumstances of the present case, as the workman had not worked with effect from the date of dismissal from service, he is entitled to get compensation towards back wages a lump sum amount of Rs. 5,000. All the above issues are answered accordingly.

13. Hence it is ordered :

That the dismissal of Shri Biswanath Parida, Supervisor from service with effect from the 1st February 1992 by the management of Cuttack Central Co-operative Bank Ltd., Nimchouri, Cuttack is neither legal nor justified. The workman Shri Parida is entitled for reinstatement with all service and financial benefits including the compensation towards back wages a lump sum amount of Rs. 5,000 (Rupees five thousand only).

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
(31-5-2005)
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
(31-5-2005)
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government